

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

AMERICAN CIVIL LIBERTIES UNION,

Plaintiff,

v.

No. 1:19-cv-11311 (JSR)

UNITED STATES CUSTOMS AND
BORDER PROTECTION and UNITED
STATES IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Defendants.

DECLARATION OF NATHAN FREED WESSLER

I, Nathan Freed Wessler, in accordance with 28 U.S.C. §1746, declare as follows:

1. I am an attorney at the American Civil Liberties Union Foundation and co-counsel for Plaintiff American Civil Liberties Union (“ACLU”) in the above-numbered action.

2. I submit this declaration in support of Plaintiff’s Reply in Support of Plaintiff’s Motion for Summary Judgment and Opposition to Defendants’ Cross-Motion for Summary Judgment.

3. The following Exhibits, attached hereto as Exhibits A to R and filed on June 26, 2020, represent true and correct copies, or true and correct copies of excerpts of such documents.

4. Exhibit A is an undated letter from James D. Nealon, Assistant Secretary for International Affairs, Office of Strategy, Policy, and Plans, Department of Homeland Security, to Senator Al Franken. It was produced in this litigation by Defendant U.S. Immigration and Customs Enforcement (“ICE”) at Bates pages 246–47 of ICE’s March 4, 2020 production.

5. Exhibit B is: ACLU, *Stingray Tracking Devices: Who’s Got Them?*, available at <https://www.aclu.org/maps/stingray-tracking-devices-whos-got-them>. I was responsible for

assembling the information presented in this document, which is based on information disclosed to the ACLU and others in response to requests under the Freedom of Information Act (“FOIA”) and state public records laws, or reported by the press.

6. Exhibit C is: U.S. Immigration and Customs Enforcement, *Memo re Use of Cell-Site Simulator Technology* (Aug. 31, 2017). It was produced by ICE in this litigation. On May 1, 2020, ICE produced the version of the document attached as Exhibit C.1, which contains one redaction, to a footnote on page 4. On May 20, 2020, ICE produced a new version of page 4 of the document with the redaction lifted, which is attached as Exhibit C.2.

7. Exhibit D is ICE’s September 19, 2012, response to a FOIA request concerning cell site simulators, assigned ICE FOIA Case No. 2012FOIA5235, submitted by Christopher Soghoian. This document is available at <https://assets.documentcloud.org/documents/2169907/12-09-19-2012-ice-foia-cell-site-simulator.pdf>.

8. Exhibit E is an invoice from the Harris Corporation to the Wilmington Police Department in North Carolina, dated January 15, 2014, detailing purchase of cell site simulator equipment. It was provided by the Wilmington Police Department to the ACLU of North Carolina in response to a public records request in 2014.

9. Exhibit F is a purchase order from the City of Durham, North Carolina to the Harris Corporation, dated January 4, 2011, detailing purchase of cell site simulator equipment. It was provided by the Durham Police Department to the ACLU of North Carolina in response to a public records request in 2014.

10. Exhibit G is: Harris Corp., KingFish: Portable, Cellular Transceiver System. This brochure was produced by the Rochester Police Department in New York to the New York Civil

Liberties Union in response to a public records request in 2016. It is available at https://www.nyclu.org/sites/default/files/Kingfish_ProductDescription.pdf.

11. Exhibit H is: Harris Corp., AmberJack: Phased Array Direction Finding Antenna. This brochure was produced by the Rochester Police Department in New York to the New York Civil Liberties Union in response to a public records request in 2016. It is available at https://www.nyclu.org/sites/default/files/AmberJack_ProductDescription.pdf.

12. Exhibit I is a Harris Corporation cell site simulator product information and pricing sheet titled “KingFish System, Accessories & Training: Man-Portable and/or Dual-Mode Vehicular Platform,” dated March 18, 2011. The document was produced by the Rochester Police Department in New York to the New York Civil Liberties Union in response to a public records request in 2016. It is available at https://www.nyclu.org/sites/default/files/Kingfish_Quote.pdf.

13. Exhibit J is: U.S. Dep’t of Justice, Department of Justice Policy Guidance: Use of Cell-Site Simulator Technology (Sept. 3, 2015), *available at* <https://www.justice.gov/opa/file/767321/download>.

14. Exhibit K is: U.S. Dep’t of Justice, *USABook, Electronic Surveillance Manual Chapter XIV: Cell Site Simulators/Digital Analyzers/Triggerfish* (Aug. 21, 2013). This document was produced by the U.S. Department of Justice to the ACLU of Northern California in FOIA litigation.

15. Exhibit L is: Oakland Police Dep’t, Policy Manual: Cellular Site Simulator Usage and Privacy (Feb. 2, 2017), *available at* <http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak062903.pdf>.

16. Exhibit M is: Erie Cty. Sheriff’s Office, Memorandum re: Cellular Tracking

Procedures (June 11, 2014), *available at* <https://www.nyclu.org/sites/default/files/20140611-2%28b%29-Cellular-Tracking-Procedures.pdf>. This document was produced by the Erie County Sheriff's Office in New York to the New York Civil Liberties Union in response to a public records request.

17. Exhibit N is a log of the Tallahassee Police Department's uses of cell site simulators from 2007 to 2014. This document was produced by the Tallahassee Police Department in Florida to the ACLU in 2014 in response to a public records request that I filed. It is available at <https://www.aclu.org/files/assets/floridastingray/03.27.2014%20-%20Master%20CE%20Log.pdf>.

18. Exhibit O is the New York City Police Department's list of "Over the Air Intercepts" from 2008 to 2015, cataloguing use of cell site simulator equipment. This document was produced by the NYPD to the New York Civil Liberties Union in 2015 in response to a public records request and has been rotated for viewability. It is available at https://www.nyclu.org/sites/default/files/summary_overtheairintercept_web.pdf.

19. Exhibit P is: Bolstering Data Privacy and Mobile Security: An Assessment of IMSI Catcher Threats Before the H. Comm. on Science, Space, and Tech., 115th Cong. 1 (2018) (written testimony of Jonathan Mayer, Assistant Professor of Computer Science and Public Affairs, Princeton University, and former Chief Technologist of the Federal Communications Commission Enforcement Bureau), *available at* <https://docs.house.gov/meetings/SY/SY21/20180627/108486/HHRG-115-SY21-Wstate-MayerJ-20180627.pdf>.

20. Exhibit Q is the Department of Homeland Security's presentation, Cellular Threats Briefing for the Federal Mobile Technology Forum, given on February 6, 2018. It was

produced by ICE in this litigation on May 21, 2020.

21. Exhibit R is: Letter from Assistant Att’y Gen. Stephen E. Boyd to Sen. Ron Wyden (Jan. 22, 2018), *available at* <https://docs.fcc.gov/public/attachments/DOC-355228A2.pdf>.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 26, 2020.

A handwritten signature in black ink, appearing to read "Nathan Freed Wessler", written over a horizontal line.

Nathan Freed Wessler